

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

CIVIL NO. 1:00CV32

H. DEAN ALLISON, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
This document pertains to:)	
JOHN A. CASHATT, and wife)	
DOROTHY CASHATT,)	
)	
vs.)	<u>ORDER OF</u>
)	<u>DISMISSAL</u>
DANIEL CONSTRUCTION COMPANY,)	
INC., <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

THIS MATTER is before the Court *sua sponte* to dismiss this action as to the Plaintiffs John A. Cashatt, and wife Dorothy Cashatt, for failure to prosecute.

On July 8, 2008, the Court permitted Plaintiff's counsel to withdraw. **See Order, filed July 8, 2008.** In her motion to withdraw, Plaintiff's counsel advised the Court since the death of Plaintiff John A. Cashatt in March 2006, no estate had been opened appointing a personal representative to pursue this action. **See Motion to Withdraw as Counsel of Record, filed June 16, 2008, ¶ 2.** Additionally, counsel stated

numerous contacts had been made with Mrs. Dorothy Cashatt, Plaintiff John Cashatt's surviving spouse, at which time she was advised of the "consequences of failing to establish an estate" and Mrs. Cashatt "indicated verbally that [those] consequences . . . were understood." *Id.* ¶

3. No response to the motion to withdraw was received from Mrs. Cashatt and the Court allowed counsel's motion. **See Order, *supra*.**

In the same Order, the Court directed Mrs. Cashatt to take appropriate action to prosecute the claims filed herein and to do so within 30 days of entry of the Order. *Id.* at 2. To date, no response, either *pro se* or through counsel, has been received from Mrs. Cashatt. Therefore, the Court finds that the Plaintiff, by the inaction of his surviving spouse, has abandoned his claims herein, failed to prosecute this action, and the claims should be summarily dismissed. **See Fed. R. Civ. P. 41(b) (providing that a dismissal for failure to prosecute "operates as an adjudication on the merits"); *Ballard v. Carlson*, 882 F.2d 93, 95 (4th Cir. 1989) (sanctioning dismissal under Rule 41(b) for failure to respond to a specific directive of the Court).**

IT IS, THEREFORE, ORDERED that the claims of John A. Cashatt, and wife Dorothy Cashatt, against all Defendants herein are hereby **DISMISSED** in their entirety.

IT IS FURTHER ORDERED that the Clerk mail a copy of this Order to Mrs. Dorothy Cashatt, at the address of 507 Grove Street, NE, Wilson, North Carolina, 27893.

Signed: August 20, 2008

A handwritten signature in black ink, appearing to read 'L. H. Thornburg', written over a horizontal line.

Lacy H. Thornburg
United States District Judge

